



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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April 19, 1999

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon *Chief for S.A.P.*  
Staff Director

FROM: Lawrence M. Noble *[Signature]*  
General Counsel

N. Bradley Litchfield *[Signature]*  
Associate General Counsel

Jonathan Levin *[Signature]*  
Senior Attorney

SUBJECT: Draft AO 1999-8 - Substitute Draft

**AGENDA ITEM**  
For Meeting of: 4-21-99

~~CONFIDENTIAL~~

On April 13, 1999, the requester submitted a comment on the agenda draft response to AOR 1999-8. This comment contained changes from the original proposal with respect to the Committee payment of expenses related to the Vanguard expenses. This office circulated a memorandum to the Commission explaining the need to seek further clarification and requesting the withdrawal of the original agenda draft response (Agenda Document #99-41) from the April 15 Open Session agenda. On April 15, the requester sent a letter further clarifying the issue. Attached is a substitute draft opinion reflecting the information in these letters. We request that this draft be placed on the Open Session agenda for April 21, 1999.

Attachment

1 ADVISORY OPINION 1999-8

2  
3 Stephen J. Harmelin  
4 Dilworth Paxon LLP  
5 3200 Mellon Bank Center  
6 1735 Market Street  
7 Philadelphia, PA 19103-7595

**DRAFT**

8  
9 Dear Mr. Harmelin:

10  
11 This responds to your letters dated February 17 and March 16, 1999, as  
12 supplemented by your letters dated April 13 and April 15, on behalf of Citizens for Arlen  
13 Specter ("the Committee"), requesting an advisory opinion concerning the application of  
14 the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission  
15 regulations to the investment of Committee funds.

16 The Committee was the principal campaign committee of Senator Arlen Specter  
17 for his 1998 re-election campaign, and Senator Specter has so designated it for a possible  
18 2004 re-election campaign. You are the Committee's treasurer, and do not anticipate any  
19 significant expenditures until 2003 when the Senator may seek re-election. Until  
20 recently, all funds remaining from the 1998 campaign were maintained in a Merrill Lynch  
21 money market account earning a return equivalent to the overnight interest rate paid on  
22 federal funds transactions. In view of the length of time the funds will be available for  
23 investment and the alternative opportunities available in today's economy, you have  
24 determined that the investment of the Committee's funds should be prudently diversified  
25 to extend to mutual funds and similar investments earning a substantially greater rate of  
26 return.

27 Accordingly, you are placing the Committee's excess funds with the Vanguard  
28 Group's family of mutual and bond funds, with the initial investment to be allocated  
29 among Vanguard's Prime Money Market Fund, GNMA Fund, United States Growth  
30 Fund, Selected Value Fund, and Intermediate-Term Tax-Exempt Municipal Bond Fund.  
31 Based on your evaluation of market trends, you will determine the specific Vanguard  
32 funds in which to invest and the appropriate allocation of the investments.

1           You state that, to avoid any potential conflict of interest or appearance thereof,  
2 Senator Specter has instructed that, although the excess funds should be invested with  
3 Vanguard, neither he "nor members of his staff" should be informed of the specific  
4 Vanguard funds selected. You state, however, that the reporting of the investment fund  
5 returns will identify the specific fund that is the source of the return. You also state that  
6 no expenditure of the Committee will be made directly from the Vanguard investment  
7 account. You ask whether the Committee may invest funds in mutual or bond funds of  
8 the type described above.

9           The Act and Commission regulations require that each political committee  
10 designate at least one State bank, Federally chartered depository institution, or depository  
11 institution the accounts of which are insured by the Federal Deposit Insurance  
12 Corporation or the National Credit Union Administration, as its campaign depository.  
13 All funds received by a political committee must be deposited in the checking account or  
14 other accounts maintained in its campaign depository. 2 U.S.C. §432(h)(1); 11 CFR  
15 103.2 and 103.3(a). No disbursements, other than petty cash, may be made by such  
16 committee except by check or similar draft drawn on those accounts. 2 U.S.C.  
17 §432(h)(1) and (2); 11 CFR 102.10 and 102.11.

18           Nevertheless, Commission regulations specifically provide that political  
19 committees may transfer funds from the depository for investment purposes. 11 CFR  
20 103.3(a). Moreover, the regulations contemplate a variety of such investments in  
21 describing cash on hand to include "certificates of deposits, treasury bills and any other  
22 committee investments valued at cost," and in requiring that committees report other  
23 receipts "such as dividends and interest." 11 CFR 104.3(a)(1), (a)(3)(x), and (a)(4)(vi);  
24 see also 2 U.S.C. §434(b)(2)(J) and 434(b)(3)(G). In advisory opinions, the Commission  
25 has also permitted the investment of political committee funds in a variety of investment  
26 vehicles. These have included government securities and money market funds (Advisory  
27 Opinion 1997-6); a cash management account maintained by an investment and  
28 brokerage firm (which could contain money market funds, U.S. Government obligations,  
29 or other securities) (Advisory Opinion 1986-18); and "an open-end, diversified

1 investment trust which is a professionally managed money market fund” (Advisory  
2 Opinion 1980-39).<sup>1</sup>

3 The ability of a committee to transfer funds to other investment accounts is  
4 conditioned, however, by the requirement that these funds must be returned to the  
5 campaign depository account before they can be used to make expenditures. 11 CFR  
6 103.3(a); Advisory Opinions 1997-6, 1986-18, and 1980-39. The Commission has  
7 narrowly modified this requirement with respect to interest or other income earned by and  
8 credited to a committee’s investment accounts with a securities firm that is automatically  
9 and directly reinvested in the investments held in the account. Although such income  
10 should be reported as an “other receipt” by a committee to reflect when it is credited, the  
11 amounts do not need to be deposited in the campaign depository account in view of the  
12 fact that the reinvestment of funds is merely a conversion of one form of cash on hand to  
13 another, and not an expenditure. Advisory Opinion 1997-6.

14 Based on the foregoing, the Commission concludes that the Committee may  
15 invest its funds in the Vanguard Group’s family of mutual and bond funds. In doing so,  
16 the Committee must comply with the disclosure and other relevant provisions of the Act  
17 and Commission regulations. The income from each of the investments, such as interest  
18 and dividends, must be disclosed in a timely manner, even if such income is directly  
19 reinvested as described above. Advisory Opinion 1997-6. In view of the fact that the  
20 specific funds in the Vanguard investment account (e.g., the United States Growth Fund,  
21 the Selected Value Fund) will be the payers of the dividends, interest, or other income,  
22 those are the entities that should be identified for itemization purposes.<sup>2</sup> In addition, no  
23 committee disbursements may be made directly from the Vanguard account; the funds to  
24 be used must first be transferred to a committee depository account.

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<sup>1</sup> See also Advisory Opinion 1975-41 in which the Commission permitted the investment of campaign funds in Government treasury notes.

<sup>2</sup> The Commission assumes that the Committee will receive periodic account statements from Vanguard which itemize the interest, dividends, or other returns for each of the various mutual and bond funds. The Commission also notes that the Committee is obligated to retain and preserve all such statements and similar records that show the interest, dividends, or other income credited to the account. 11 CFR 102.9 and 104.14(b); see also Advisory Opinion 1997-6, n.2.

